

## **REMARKS/ARGUMENTS**

### **35 USC § 102**

**Claims 1-20** were rejected under 35 USC § 102 (a)/(e) as being inherently anticipated by U.S. Pat. No. 6,080,425. With respect to claims 1-16, the applicant agrees in some respects and disagrees in others. With respect to claims 17-20, the applicant respectfully disagrees.

A declaration under 37 CFR 1.132 is submitted showing that the subject matter disclosed and not claimed in the '425 patent was by the inventor. Consequently, as that subject matter was not "by another", claims 1-20 should not be held anticipated by the '425 patent.

**Claims 1, 3-4, and 7-19** were rejected under 35 USC § 102 (a)/(e) as being inherently anticipated by U.S. Pat. No. 5,962,049. With respect to claims 1-16, the applicant agrees in some respects and disagrees in others. With respect to claims 17-19, the applicant respectfully disagrees.

A declaration under 37 CFR 1.132 is submitted showing that the subject matter disclosed and not claimed in the '049 patent was by the inventor. Consequently, as that subject matter was not "by another", claims 1, 3-4, and 7-19 should not be held anticipated by the '049 patent.

**Claims 1, 3-4, and 7-19** were also rejected under 35 USC § 102 (a)/(e) as being inherently anticipated by U.S. Pat. No. 5,985,842. With respect to claims 1-16, the applicant agrees in some respects and disagrees in others. With respect to claims 17-19, the applicant respectfully disagrees.

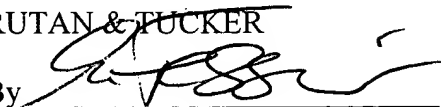
A declaration under 37 CFR 1.132 is submitted showing that the subject matter disclosed and not claimed in the '842 patent was by the inventor. Consequently, as that subject matter was not "by another", claims 1, 3-4, and 7-19 should not be held anticipated by the '842 patent.

In view of the present amendments and arguments, the applicant believes that all claims are now in condition for allowance. Therefore, the applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

RUTAN & TUCKER

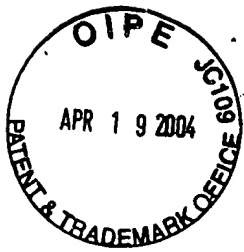
By

A handwritten signature in black ink, appearing to read 'M. Fessenmaier', is written over a horizontal line.

Martin Fessenmaier, Ph.D.

Reg. No. 46,697

Tel.: (714) 641-5100



Appl. No. 09/972,181  
Amdt. dated Apr. 12, 2004  
Reply to Office action of Jan. 15, 2004

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. BOX 1450  
ALEXANDRIA, VA 22313-1450**

Appl No.:	09/972,181	Confirmation No. 3749
Applicant:	Dusan Miljkovic	
Filed:	October 5, 2001	
TC/A.U.:	1625	
Examiner:	Oh, Taylor V.	
Docket No.:	100700.0003US1	
Customer No.:	34284	

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**DECLARATION UNDER 37 U.S.C. § 1.132**

I, the undersigned, Dusan Miljkovic, hereby declare as follows:

1. I am the sole inventor of U.S. Patent application with the serial number 09/972,181.
2. I have been informed that *claims 1-20 in the above-referenced application have been rejected under 35 USC § 102 (a) and (e) based upon U.S. Pat. No. 6,080,425*. I believe that the rejection should be withdrawn for the following reason:
3. The '425 reference is a joint Patent to the inventor and Z. Pietrzkowski. I hereby declare that the subject matter relied upon in the '425 patent was the invention of the applicant. This is, among other things, reflected by the fact that two earlier patents (U.S. Pat. No. 5,962,049 and U.S. Pat. No. 5,985,842) issued to the applicant in which (a) the applicant is the sole inventor, and (b) the presently claimed subject matter is included in a different context. Therefore, *the disclosed but not claimed subject matter in the '425 patent was by the inventor, and therefore not "by another"*.
4. I have been informed that *claims 1, 3-4, and 7-19 in the above-referenced application have been rejected under 35 USC § 102 (a) and (e) based upon U.S. Pat. No. 5,962,049*. I believe that the rejection should be withdrawn for the following reason:

5. The '049 reference is a patent to a sole inventor, which is the applicant. I hereby declare that the subject matter relied upon in the '049 patent was the invention of the applicant. This is, among other things, reflected by the fact that the '049 patent has only a single inventor (which is the applicant). Therefore, ***the disclosed but not claimed subject matter in the '049 patent was by the inventor, and therefore not "by another"***.
6. I have been informed that ***claims 1, 3-4, and 7-19 in the above-referenced application have been rejected under 35 USC § 102 (a) and (e) based upon U.S. Pat. No. 5,985,842.*** I believe that the rejection should be withdrawn for the following reason:
7. The '842 reference is a patent to a sole inventor, which is the applicant. I hereby declare that the subject matter relied upon in the '842 patent was the invention of the applicant. This is, among other things, reflected by the fact that the '842 patent has only a single inventor (which is the applicant). Therefore, ***the disclosed but not claimed subject matter in the '842 patent was by the inventor, and therefore not "by another"***.
8. I hereby declare that all statements made herein of my own knowledge are true and that statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Title 18, United States Code, Section 1001, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Executed at San Diego, California, this 12th day of April, 04.

By: Dusan Miljkovic  
Dusan Miljkovic

Respectfully submitted,

RUTAN & TUCKER

By: [Signature]  
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